HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.26374 of 2006

Date : 2-1-2007

Between :

Shaik Vazeeruddin .. Petitioner

and

The Kaikalur Gram Panchayat,
Represented by Executive Officer, ..
Respondent
Panchayat Secretary,
Kaikalur

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.26374 of 2006

ORDER:

1. This Court ordered notice before admission on 20-12-2006. Sri M.Prabhakar Rao had taken notice on behalf of 1st respondent and the learned Assistant Government Pleader for Panchayat Raj had taken notice on behalf of respondents 2 and 3 and the Counsel for petitioner was permitted to take out notice to the 4th respondent and file proof of service. It is stated that the 4th respondent is served and proof of service in relation thereto also had been filed.

2. The Writ Petition is filed by the petitioner Shaik Vazeeruddin praying for a writ of mandamus declaring L.Dis.No.1719/2-006-PTS-4, dated 22-11-2006 of the District Panchayat Officer as illegal, irregular, ultravires and

unsustainable and to set aside the same holding that the 4th respondent has suffered disqualification and is not entitled to continue as member of 14th Ward of Kaikaluru Gram Panchayat, Krishna District and to pass such other suitable orders.

3. The order referred to supra impugned in the present Writ Petition reads as hereunder :

Government of Andhra Pradesh
Panchayat Raj Department

From
Sri T.Sravan Kumar, M.Sc.,M.A.(Edu),
District Panchayat Officer,
Krishna, Machilipatnam.

To
The Collector & District
Magistrate,
Krishna,
Machilipatnam.

L.Dis.No.1719/2006 Pts.4, Dated 22.11.2006

Sir,

Sub:- Grievance cell Petition – Kaikaluru Gram Panchayat –
Kaikaluru Mandal – filed by Sri Shaik Vageeruddin – Requested for enquiry of 14th Ward Member – Report submitted – Regarding.

Ref:- 1. Representation Dated 4-9-2006 of Sri Shaik Vageeruddin, Kaikaluru Gram Panchayat.
2. Grievance Cell Register No.P.196-P312, Dated 4-9-2006 of the Collector and District Magistrate, Krishna,
Machilipatnam.
3. Lr.Roc.No.83/2006, Dated 30-10-2006 of the Mandal

Parishad Development Officer, Kaikaluru.

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Kind attention is invited to the references 1st to 3rd cited.

In the reference 2nd cited, the representation of Sri Shaik Vageeruddin, resident of Kaikaluru Gram Panchayat received in the ref. 1st cited has been referred to this office for taking necessary action and to report compliance.

In the ref. 1st cited, Shaik Vageeruddin has stated Sri Syed Ameer, who was elected as 14th Ward member of Kaikaluru Gram Panchayat has 3 children due to which he is not eligible for the contest as ward member of Gram Panchayat.

The matter was referred to the Mandal Parishad Development Officer, Kaikaluru for a detailed report in the matter.

The Mandal Parishad Development Officer, Kaikaluru has enquired into the contents of the ref. 1st cited and submitted her report in the reference 3rd cited.

In the report of the Mandal Parishad Development Officer, Kaikaluru has stated that Sri Syed Ameer had his first son on 6-7-1994 and had twins of sons on 21-11-1997 and his wife Smt.Shahida Begum has undergone “Tubectomy” operation for the family planning on 6-12-1997 at community health center, Kaikaluru. The Mandal Parishad Development Officer has enclosed the certificate issued by the National School, Kaikaluru in confirmation of the date of birth of the last two sons by which it is confirmed that the wife of the ward member

has given birth for twins on 21-11-1997. Further the Mandal Parishad Development Officer has enclosed the copy of Affidavit filed by Sri Syed Ameer, on 27-3-2002 stating that his two sons who have born as twins in the second delivery on 21-11-1997. He has also stated in the Affidavit that the Gram Panchayat did not issue birth certificates to the twins as the Gram Panchayat has not recorded the birth particulars of the said two sons.

By the above, it is confirmed Sri Syed Ameer had twins on 21-11-1997 as second delivery. As per the explanation issued u/s.19(L) of the APPR Act 1994, it is specified that where the couple has only one child from the earlier delivery or deliveries on the date of commencement of the Act and thereafter any number of children born of single subsequent delivery shall be deemed to be one entity.

As per the above explanation Sri Syed Ameer, 14th Ward Member, Kaikaluru Gram Panchayat would not incur disqualification either for the contest as member or to be disqualified after his election as ward member.

Therefore, I request to kindly dispose of the Grievance Petition as rejected."

4. Sri P.Veera Reddy, the learned Counsel representing the writ petitioner would submit that as per the procedure specified under Section 22 of A.P. Panchayat Raj Act 1994 (hereinafter in short referred to as "Act" for the purpose of convenience), the concerned District Court is the competent authority and hence the impugned order cannot be sustained. The learned Counsel also placed strong

reliance on a decision of this Court in **N.Tirupataiah Vs. District Panchayat Officer, Nellore (2005(1) ALT 426= 2005(1) ALD 181).**

5. The learned Assistant Government Pleader for Panchayat Raj however would point out that from the nature of the order it is clear that it is not a final order and at the best it can be said that the concerned District Panchayat Officer addressed the Collector and District Magistrate in a way recommending to dispose of the grievance petition as rejected and nothing beyond thereto. The learned Assistant Government Pleader for Panchayat Raj also would contend that the question whether number of children born at a single subsequent delivery to be deemed as one entity or not, is a matter which may have to be gone into and hence in view of the same, discretion was exercised by the concerned District Panchayat Officer and a recommendation was made to the effect already specified above. It is stated that on 6-8-2006 the elections for the ward members etc., are conducted and the petitioner contested for election as 14th Ward Member and the 4th respondent also contested for the said ward and he was declared elected with a small margin of 13 votes. It is also stated that at the time of filing nomination, the 4th respondent had suppressed the fact of his suffering disqualification by having three children and that he is

disqualified from contesting the election. However he had contested the election by filing a false declaration and playing fraud on the election authorities as well as the voters of the ward. The 4th respondent is having three children namely (1) Khaleed, born on 6-7-1994, student of 7th class at Kaikalur, (2) Syed Sajeed, born on 21-11-1997, student of 6th class at Kaikalur and (3) Syed Sabeed, born on 21-11-1997, student of 4th class at Kaikalur. The 4th respondent was married on 5-9-1993 and in the family ration cards applications submitted by him contains that he is having three children through separate births, but however strangely he is pleading now that the 2nd and 3rd children are twins. It is also further stated that after having come to know about the said disqualification on 4-9-2006 the petitioner submitted a representation to the respondents 2 and 3 along with other officers bringing to their notice the disqualification of the 4th respondent to continue any longer as ward member in view of Section 19(3) of the Act. The 2nd respondent having received the same registered it under grievance cell register No.P196-P312, dated 4-9-2006 and referred it for necessary action to the 3rd respondent. The 2nd respondent seems to have requested the Mandal Parishad Development Officer to enquire into the matter and to submit the report. The Mandal Parishad

Development Officer without conducting any enquiry and totally relying upon the information furnished by the 4th respondent submitted his report in Lr.R.O.C.No.83/06 dated 30-10-2006 to the 3rd respondent. The 3rd respondent without providing any opportunity to the petitioner to explain and to produce the material to show that the 4th respondent is disqualified, submitted a report in L.Dis.No.1719/2006-PTS-4 dated 22-11-2006 to the 2nd respondent stating that the 4th respondent had not incurred any disqualification. It is further stated that the 3rd respondent had requested the 2nd respondent to reject the grievance petition given by the petitioner. It is also further stated that Section 19 of the Act prescribes disqualification of the candidates and Section 19(3) of the Act contemplates that a person having more than two children shall be disqualified for election or continuing as a member. As per the proviso the birth of the 4th child one year after the announcement of the Act will be taken into consideration for the purpose of the Section. Admittedly all the three children of the 4th respondent were born after the stipulated date and as such he is disqualified to continue as a member. Section 22 of the Act of the contemplates that the execution authority after receiving a complaint about the disqualification has to give intimation of such allegation to the member through the District

Panchayat Officer and if such member disputes the correctness of the allegation so made, the Executive Officer within a period of two months shall refer the matter to the District Court for decision. In the present case, the executive authority had not yet intimated the allegation to the 4th respondent through District Panchayat Officer. The 1st respondent is delaying the intimation of allegation with a view to help the 4th respondent and this inaction is totally malafide and unjustified. It is further stated that surprisingly even the 2nd respondent is failing in giving appropriate instructions to the 1st respondent having received the representation of the petitioner. Therefore the inaction of the respondents 1 and 2 is totally unjustified, unfair, contrary to the provisions of the Act and against the established principles of law. Further the respondents 1 and 2 are acting against the legitimate expectations of the petitioner. Further specific stand is taken that Section 19(3) of the Act prescribes disqualification and according to Section 22 of the Act a dispute about the disqualification has to be decided by the District Court on a reference made by the District Panchayat Officer. On the information furnished by the executive authority or others, the District Panchayat Officer has to put the information to the member of the Gram Panchayat about the allegation of sufferance of disqualification and if he disputes then the matter has to be

referred to the District Court. Hence the only jurisdiction that is available to the District Panchayat Officer is to disqualify him if he admits of having more than two children. The District Panchayat Officer cannot adjudge as to whether the member had suffered disqualification or not. Hence the District Panchayat Officer is not competent to express such opinion recommending to the District Collector to reject the grievance petition. The said action is without jurisdiction.

6. Section 22 of the Act dealing with **Authority to decide questions of disqualification of members** reads as hereunder :

> (1) Where an allegation is made that any person who is elected as a member of a gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which office of the gram Panchayat is situated for decision.
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> (2) Pending such decision, the member shall be

entitled to act as if he is qualified or were not disqualified.

(3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a gram Panchayat as a consequence of his ceasing to be a member of the gram Panchayat under clause (b) of Section 20 and is restored later to his membership of the gram Panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be.

Reliance also was placed on the decision referred supra wherein at para-16 the learned Judge of this Court observed :

> "We are concerned in this case with sub-article (2) of Article 243F which in plain terms mandates that the question of disqualification of a member shall be referred to a decision of such authority as the legislature may prescribe. By Section 22(1) as amended by A.P. Act 22 of 2002, the legislature has prescribed the 'district court' as an authority to decide the question of disqualification. Though the provision refers to various authorities like (a) executive authority, (b) District Panchayat Officer, (c) Commissioner and (d) District Court, the decision making power in regard to disqualification of a member is given only to the district court and none else. Therefore the District Panchayat officer cannot and could not have passed the impugned order."

It is needless to say that when an authority to decide the questions of disqualification of members had been specified

by a statutory provision, the District Panchayat Officer making such an order in a way recommending to the effect that the grievance of the petitioner may be rejected, in the considered opinion of this Court, is contrary to the very object and spirit of Section 22 of the Act referred to supra. This question in a way had fallen for consideration before this Court and the learned Judge of this Court had expressed the opinion which had been referred to supra. In the light of the clear language of Section 22 of the Act which in a way mandates that the District Court having jurisdiction over the area in which the office of the Gram Panchayat is situated to decide such questions of disqualification of members, this Court is of the considered opinion that the impugned order made by the concerned District Panchayat Officer cannot be sustained. It is needless to say that the authorities are bound to follow the procedure as specified under Section 22 of the Act. In view of the same, the other question whether twins born in one delivery would constitute one entity or otherwise need not detain this Court any further since the said question may have to be decided at the appropriate stage. Accordingly the impugned order is hereby set aside and the District Panchayat Officer, Krishna District, Machilipatnam – 3rd respondent to follow the procedure as specified under Section 22 of the Act as expeditiously as possible, preferably within a period of four

weeks from the date of receipt of this order. Liberty is given to the writ petitioner and also the 4th respondent as well to invoke the authority and jurisdiction of the concerned District Court in relation to the question of disqualification if they are advised to do so in this regard. It is needless to say that all other questions are left open to be decided by the competent District Court in this regard.

7. Accordingly, the Writ Petition is allowed to the extent indicated above. No costs.

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Justice P.S.Narayana

Date : 2-1-2007

L.R. copy to be marked : YES / NO

Note: Furnish copy in three days.

AM